

E 589-01

**UNITED STATES DEPARTMENT OF
COMMERCE
NEWS**

WASHINGTON, D.C. 20230

BUREAU OF
EXPORT
ADMINISTRATION

FOR IMMEDIATE RELEASE
June 19, 1998
www.bxa.doc.gov

CONTACTS: Susan Hofer
Eugene Cottilli
202-482-2721

GATEWAY 2000 SETTLES COMPUTER EXPORT CONTROL CHARGES

(Washington, D. C.) The Commerce Department's Bureau of Export Administration (BXA) today imposed a \$402,000 civil penalty on South Dakota based Gateway 2000, Inc. to settle charges that the company violated U.S. export control requirements when it sent U.S. origin computer systems to 16 countries, including Iran, Syria and China, Assistant Secretary for Export Enforcement Amanda DeBusk announced.

The Department alleged that on 30 separate occasions between February 1992 and April 1993, Gateway 2000, Inc. exported computer systems from the U.S. without the required validated export licenses. All of the computers contained 486 chips and had composite theoretical performance (CTP) levels ranging from 18.61 to 24.82 MTOPS (millions of theoretical operations per second). At the time of the alleged exports, computers with MTOPS of over 12.5 required export licenses to the 16 countries involved. The Department also alleged that, in each case, Gateway 2000 knew that a license was required and that, in connection with 27 of these exports, the company filed Shipper's Export Declarations which contained false or misleading statements of material fact.

Gateway 2000 agreed to pay a \$402,000 civil penalty to settle the allegations that it committed 87 violations of the Export Administration Regulations. The company cooperated fully with the Department's investigation, which was conducted by the Office of Export Enforcement's Chicago field office.

The Department of Commerce, through its Bureau of Export Administration, administers and enforces export controls for reasons of national security, foreign policy, nonproliferation, and short supply. Criminal penalties, as well as administrative sanctions, can be imposed for violations.



E589-02 F01A

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gateway 2000, Inc.
610 Gateway Drive
North Sioux City, South Dakota 57049

Attention: Mr. Ted Waitt
President

Dear Mr. Waitt:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described in detail below, Gateway 2000, Inc. (Gateway) has violated the Export Administration Regulations (15 C.F.R. Parts 730-774)(1997)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act).²

Facts constituting violations:

CHARGES 1-60

On 30 separate occasions between on or about February 20, 1992 and on or about April 29, 1993, and as described in detail on Schedule A which is attached hereto and incorporated by reference herein, Gateway exported U.S.-origin computer equipment to various countries without applying for and obtaining the validated licenses that Gateway knew or had reason to know were required by Section 772.1(b) of the former Regulations. BXA alleges that, by exporting U.S.-origin commodities to any person or destination or for any use in violation of or contrary to the terms of the Act, or any

¹ The alleged violations occurred in 1992 and 1993. The Regulations governing the violations at issue are found in the 1992 and 1993 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992 and 1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).



regulation, order, or license issued thereunder, Gateway violated Section 787.6 of the former Regulations in connection with each of the 30 shipments described on Schedule A, for a total of 30 violations. BXA further alleges that, by selling, transferring, or forwarding U.S.-origin commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur, Gateway violated Section 787.4(a) of the former Regulations in connection with each of the 30 shipments described on Schedule A, for a total of 30 violations.

CHARGES 61-87

In connection with 27 of the shipments described above and as identified in detail on Schedule A, Gateway prepared or caused to be prepared a Shipper's Export Declaration (SED), an export control document as defined in Section 770.2 of the former Regulations, on which it was represented that the commodities described thereon, U.S.-origin computer equipment, were eligible for export from the United States to the stated destination under either General License G-DEST or General License GFW. In fact, a validated export license was required for each export of that U.S.-origin computer equipment. BXA alleges that, by making false or misleading representations of material fact to a U.S. government agency directly or indirectly in connection with the preparation or use of an export control document, Gateway violated Section 787.5(a) of the former Regulations in connection with 27 of the shipments described on Schedule A, for a total of 27 violations.

BXA alleges that Gateway committed 30 violations of Section 787.4(a), 27 violations of Section 787.5(a), and 30 violations of Section 787.6, for a total of 87 violations of the former Regulations.

Accordingly, Gateway is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

Imposition of the maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If Gateway fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

Gateway is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, Gateway's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of Gateway's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Pamela P. Breed, Esq." below the address. Mrs. Breed may be contacted by telephone at (202) 482-5311.

Sincerely,

Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosures

**SCHEDULE OF VIOLATIONS
GATEWAY 2000, INC.**

SCHEDULE A

CHARGE NO.	EXPORT DATE (on or about)	COMMODITY	DESTINATION	AIR WAYBILL
1, 31, 61	02/20/92	Gateway Personal Computer, 486-33 MHz	Syria	AEI 2117926
2, 32, 62	05/07/92	Gateway Personal Computers, 486-50MHz	Poland	AEI 9542251
3, 33, 63	06/02/92	Gateway Personal Computers, 486-50MHz	Poland	AEI 9542529
4, 34, 64	06/18/92	Gateway Personal Computer, 486-50MHz	P.R.C.	AEI 9542744
5, 35	08/28/92	Gateway Personal Computer, 486-50MHz	Poland	UPS 4806 2723 160
6, 36, 65	09/16/92	Gateway Personal Computer, 486-50MHz	Czechoslovakia	AEI 9541824
7, 37, 66	09/22/92	Gateway Personal Computer, 486-66MHz	Mexico	UPS 4806 2693 836
8, 38, 67	10/07/92	Gateway Personal Computer, 486-50MHz	Poland	AEI 9540074
9, 39, 68	10/09/92	Gateway Personal Computers, 486-66MHz	Venezuela	AEI 9540096

CHARGE NO.	EXPORT DATE (on or about)	COMMODITY	DESTINATION	AIR WAYBILL
10, 40, 69	10/13/92	Gateway Personal Computers, 486-66MHz	Kuwait	AEI 9540070
11, 41, 70	10/16/92	Gateway Personal Computers, 486-66MHz	Mexico	AEI .9540261
12, 42, 71	10/19/92	Gateway Personal Computers, 486-66MHz	Saudia Arabia	AEI 9540188
13, 43, 72	10/23/92	Gateway Personal Computers, 486-50MHz	Syria	AEI 9540298
14, 44, 73	10/27/92	Gateway Personal Computer, 486-50MHz	Poland	AEI 9540377
15, 45, 74	11/16/92	Gateway Personal Computers, 486-66MHz	Mexico	AEI 9540642
16, 46, 75	11/17/92	Gateway Personal Computer, 486-66MHz	Czechoslovakia	AEI 9540650
17, 47, 76	12/03/92	Gateway Personal Computers, 486-50MHz	Ukraine	AEI 9540849
18, 48, 77	12/11/92	Gateway Personal Computer, 486-66MHz	West Indies	AEI 9540968
19, 49, 78	12/14/92	Gateway Personal Computers, 486-66MHz	Mexico	AEI 9540980
20, 50, 79	12/16/92	Gateway Personal Computers, 486-66MHz	Argentina	AEI 9540989

E588-07

CHARGE NO.	EXPORT DATE (on or about)	COMMODITY	DESTINATION	AIR WAYBILL
21, 51, 80	12/17/92	Gateway Personal Computers, 486-66MHz	Kuwait	AEI 9540947
22, 52, 81	12/29/92	Gateway Personal Computer, 486-50MHz	Poland	AEI 8078762
23, 53, 82	12/30/92	Gateway Personal Computers, 486-66MHz	Mexico	AEI 8078812
24, 54, 83	12/30/92	Gateway Personal Computer, 486-66MHz	Ukraine	AEI 6214310
25, 55, 84	01/04/93	Gateway Personal Computers, 486-66MHz	Saudia Arabia	AEI 8078772
26, 56	01/05/93	Gateway Personal Computer, 486-66MHz	Estonia	UPS 3840 2062 597
27, 57, 85	01/19/93	Gateway Personal Computer, 486-66MHz	Mexico	UPS 3840 2064 586
28, 58	01/26/93	Gateway Personal Computers, 486-66MHz	Costa Rica	UPS 3840 2065 432
29, 59, 86	03/11/93	Gateway Personal Computers, 486-33MHz	Iran	AEI 8079236
30, 60, 87	04/29/93	Gateway Personal Computers, 486-66MHz	Brazil	AEI 6225099

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
GATEWAY 2000, INC.)
610 Gateway Drive)
North Sioux City, South Dakota 57049,)
)

Respondent)

SETTLEMENT AGREEMENT

This Agreement is made by and between Gateway 2000, Inc. (Gateway) and the Bureau of Export Administration, United States Department of Commerce, pursuant to Section 766.18(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (1997)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act).²

Whereas, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), has notified Gateway of its intention to initiate an

¹The alleged violations occurred in 1992 and 1993. The Regulations governing the violations at issue are found in the 1992 and 1993 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992 and 1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

²The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

administrative proceeding against it pursuant to the Act and the Regulations, based on allegations that, on 30 occasions between on or about February 20, 1992 and on or about April 29, 1993, Gateway violated the provisions of Sections 787.6 and 787.4(a) of the former Regulations by exporting U.S.-origin computer equipment to various countries without applying for and obtaining the validated licenses that Gateway knew or had reason to know were required, and that, in connection with 27 of the shipments, Gateway violated the provisions of Section 787.5(a) of the former Regulations by making a false or misleading statement of material fact directly or indirectly to a U.S. Government agency in connection with the preparation, submission or use of an export control document;

Whereas, Gateway has reviewed the proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true; it fully understands the terms of this Settlement Agreement and the proposed Order; it enters into this Settlement Agreement voluntarily and with full knowledge of its rights, and it states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

Whereas, Gateway neither admits nor denies the allegations contained in the proposed Charging Letter;

Whereas, Gateway wishes to settle and dispose of all matters that were the subject of the investigation leading to the proposed Charging Letter (including the matters alleged in the proposed Charging Letter) by entering into this Settlement Agreement; and

Whereas, Gateway agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (appropriate Order);

Now Therefore, Gateway and BXA agree as follows:

1. BXA has jurisdiction over Gateway, under the Act and the Regulations, in connection with the matters alleged in the proposed Charging Letter.
2. BXA and Gateway agree that the following sanction shall be imposed against Gateway in complete settlement of the alleged violations of the Act and former Regulations arising out of the transactions set forth in the proposed Charging Letter:
 - (a) Gateway shall be assessed a civil penalty of \$402,000, which shall be paid within 30 days of the date of entry of an appropriate Order;
 - (b) As authorized by Section 11(d) of the Act, the timely payment of the civil penalty agreed to in paragraph 2(a) is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Gateway. Failure to make timely payment of the civil penalty shall result in the denial of all of Gateway's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.
3. Gateway agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the appropriate Order, when entered), including, without limitation, any right: (a) to an

administrative hearing regarding the allegations in the proposed Charging Letter; (b) to request a refund of any civil penalty paid pursuant to this Settlement Agreement and the appropriate Order, when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

4. BXA agrees that, upon entry of an appropriate Order, it will not initiate any administrative proceeding against Gateway in connection with any violation of the Act or the Regulations arising out of the transactions that were the subject of the investigation leading to the proposed Charging Letter (including the transactions that were identified in the proposed Charging Letter).

5. Gateway understands that BXA will make the proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered, available to the public.

6. BXA and Gateway agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and Gateway agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve

to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a decision and Order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BY: Mark D. Menefee
Mark D. Menefee
Acting Director
Office of Export Enforcement

Date: 6/17/98

GATEWAY 2000, INC.

BY: Michael D. Hammond
Michael D. Hammond
Senior Vice President -
Global Manufacturing

Date: 6/15/98

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
GATEWAY 2000, INC.)
610 Gateway Drive)
North Sioux City, South Dakota 57049,)
)

Respondent)

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Gateway 2000, Inc. (Gateway) of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act),¹ and the Export Administration Regulations (15 C.F.R. Parts 730-774 (1997)) (the Regulations),² based on allegations that, on 30 occasions between on or about February 20, 1992 and on or about April 29, 1993, Gateway violated the provisions of Sections 787.6 and 787.4(a) of the former Regulations by exporting U.S.-origin computer

¹The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

² The alleged violations occurred in 1992 and 1993. The Regulations governing the violations at issue are found in the 1992 and 1993 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992 and 1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

equipment to various countries without applying for and obtaining the validated licenses that Gateway knew or had reason to know were required, and that, in connection with 27 of the shipments, Gateway violated the provisions of Section 787.5(a) of the former Regulations by making a false or misleading statement of material fact directly or indirectly to a U.S. Government agency in connection with the preparation, submission or use of an export control document;

BXA and Gateway having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$402,000 is assessed against Gateway, which shall be paid within 30 days of the date of this Order. Payment shall be made in the manner specified in the attached instructions.


SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1998)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, Gateway will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that, as authorized by Section 11(d) of the Act, the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Gateway.

Accordingly, if Gateway should fail to pay in a timely manner the civil penalty set forth above, the undersigned will enter an Order under the authority of Section 11(d) of the Act denying all of Gateway's export privileges for a period of one year from the date of this Order.

FOURTH, that the proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.


F. Amanda DeBusk
Assistant Secretary
for Export Enforcement

Entered this 19th day of June, 1998.